IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2107 OF 2006

M/s.D.K.Lab Chemicals .. Petitioner
v/s.
Union of India and another .. Respondents

Mr.S.N.Kantawala with Mr.K.Merchant i/by M/s.Apex Law Partners for the petitioners.

Mr.M.I.Sethna, Senior Counsel with Mr.P.S.Jetley and Mr.A.M.Sethna i/by Dr.T.C.Kaushik for the respondent No.2.

CORAM : R.M. LODHA &
J.P.DEVADHAR, JJ.

DATED : 3RD MAY, 2006.

ORAL JUDGMENT (Per R.M.Lodha, J.)

On 29th March, 2006, notice was issued to the respondents to show cause why writ petition be not admitted and disposed of at the admission stage. Pursuant thereto, notice has been served on the respondents and three affidavits have been filed in opposition to the writ petition. We heard the counsel for the parties for final hearing accordingly.

2. The petitioner claims to have purchased the consignment of car amplifiers and speakers from one M/s.Cosmo Trading Co., Hong Kong for Rs.12,58,976.14 (US$ 27,516.80) on 17.9.2005. On 11.11.2005, the Bill of Entry was lodged for clearance of

goods. It is the case of the petitioner that on 24.11.2005, the Bill of Entry was assessed as contemporary imports and audited by the Assessing Officer and sent to the Assistant Commissioner of Customs (Export Promotion) for final approval in the EDI system. The Bill of Entry was not assessed for quite some time and on 27.12.2005, the Assistant Commissioner of Customs (Export Promotion), Appraising Group-7 (Respondent No.2) issued order for exemption by taking samples and market survey. On 13.1.2006, the petitioner's clearing house agent applied for the permission to warehouse the goods pending assessment. The said permission was allowed. The petitioner filed the writ petition being writ petition No.435 of 2006 before this court for release of the consignment. The respondent No.2 filed reply to the said writ petition. On 21.2.2006, the petitioner withdrew the said writ petition in the light of the statement made by the senior counsel for the respondents that the respondents shall release the imported goods based on NIDB data on the provisional assessment basis within a period of six weeks. The petitioner states that thereafter on 1.3.2006, the advocate for the petitioner called upon the respondent No.2 to assess the Bill of Entry on the basis of NIDB data as per the order dated 21st February, 2006. In response thereto, the respondent No.2 asked the petitioner to submit PD bond of Rs.1,00,71,808/- and bank guarantee for Rs.25,00,000/- for provisional assessment of the Bill of Entry. This led to the petitioner in filing the present writ petition.

3. In the first affidavit dated 12th April, 2006 filed on behalf of the respondent No.2 through Vikram Wani, Assistant Commissioner of Customs, the stand of the respondents is that on the basis of the report given in the case of M/s.Poojan Marketing by DRI on 25.11.2005, Bill of Entry of the present petitioner was examined and subjected to first check assessment and examination under SIIB(X) supervision. As per the report received from SIIB (X), retail price of the imported goods was found 10 to 20 times of the CIF and, therefore, the value of the imported goods is 4 to 8 times of the declared CIF value. It is stated that based on that, the petitioner was asked to give bond of Rs.1,06,60,064 and the bank guarantee of Rs.25,00,000/-.

4. In the second affidavit dated 19th April, 2006 filed by the respondents through M.H.Shaikh, Deputy Commissioner of Customs, it is stated that the SIIB report pointed out very huge undervaluation. Until M/s.Poojan Marketing case was booked by DRI, all provisional assessments were done on the basis of NIDB values but, thereafter, provisional clearance was not granted to NIDB values because it was found that NIDB values were constituted by the imports effected by these very importers. It is reiterated that based on the SIIB report, the petitioner was asked to furnish bond and the bank guarantee.

5. In the third affidavit filed on behalf of the respondents through M.H.Shaikh, dated 2nd May, 2006, it is admitted that the import/clearance of similar goods have been made at Nhava Sheva and CFS (Mulund) post 25.11.2005 based on NIDB values. It is also admitted that vide order in original dated 20th December, 2005 passed by the Joint Commissioner of Customs, Group VB, Nhava Sheva Customs, the goods have been released at NIDB values.

6. We reflected over the matter in the light of the arguments canvassed before us and the pleadings on record.

7. That the petitioner has not been treated fairly by respondent No.2 is seen from the following reasons. First, the communication dated 25.11.2005 sent by the Directorate of Revenue Intelligence (DRI) to the Commissioner of Customs (Imports)(Exhibit-1 annexed with the reply affidavit of Vikram Wani), itself records that in view of the pendency of the matter before the Supreme Court in respect of branded speakers vide civil appeal No.5773/2004, the goods are being assessed provisionally against PD bond in CFS (Mulund), Nhava Sheva and New Custom House, Mumbai and that the provisional release is based on the value that has been enhanced as per NIDB data. Second, post 25.11.2005 (the date on which the DRI sent the communication to the

Commissioner of Customs (Imports), as late as on 20th December, 2005 in the order in original passed by the Joint Commissioner of Customs, Group VB, Nhava Sheva Customs, for the similar goods, the valuation has been done as per NIDB data. Third, M.H.Shaikh, Deputy Commissioner of Customs in his affidavit dated 2nd May, 2006 admits that the imports/clearance of similar goods have been made at Nhava Sheva and CFS (Mulund) post 25.11.2005 on the valuation as per NIDB data. And Fourth, the consideration of the petitioner's case on the basis of the imports made by Poojan Marketing vide Bill of Entry No.604821 dated 15.9.2005. The goods imported by M/s.Poojan Marketing for which the Bill of Entry was furnished on 15.9.2005 and which were released provisionally to M/s.Poojan Marketing accepting the value as suggested by the department are not the similar goods in entirety as the said goods comprise of Cone Type Speakers, Car CD cassette Receivers, DVD Players with built in 7" L.C.D.Car Display. In so far as the present consignment is concerned, the imported goods are Car Speakers and amplifiers and not the DVD players or Car CD cassette Receivers.

8. We find it difficult to accept the submission of Mr.Sethna that the petitioner is not being treated differently from others. If the Customs Authorities at various places like Nhava Sheva, Mulund (CFS) and New Customs House, Mumbai (this is stated in the communication of DRI dated 25.11.2005) are permitting the

clearance of similar goods provisionally by accepting customs duty leviable as per NIDB data, we find no justification in the action of respondent No.2 in not permitting the petitioner to do so. After all this is only provisional assessment.

9. The action of the respondent No.2 in not permitting the clearance of the petitioner's goods provisionally by accepting customs duty leviable as per NIDB data, in our view, is unfair and unreasonable.

10. We, accordingly, dispose of the rule by the following order:

> Upon petitioner's furnishing PD bond of Rs.1,00,00,000/- (Rupees One crore), the respondent No.2 shall release the goods imported by the petitioner vide Bill of Entry No.622581 dated 11th November, 2005 on provisional basis by accepting the customs duty leviable as per NIDB data.
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> No costs.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)